

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS  
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:  
ATIKE SULE AKYUZ**

Petitioner

Atike Sule Akyuz  
For the Petitioner

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Robert Goff

Department of Housing and  
Community Affairs

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Board of Appeals No. S-2775  
(OZAH No. 10-28)

Report and Recommendation by: Lynn A. Robeson, Hearing Examiner  
Hearing held by: Martin L. Grossman, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## **I. STATEMENT OF THE CASE**

In Petition No. S-2775, Atike Sule Akyuz, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 6305 Red Wing Road, Bethesda, Maryland. The legal description of the property is Lot 6, Block 7 in the Woodburn Subdivision, and is shown on Tax Map No. GN51.

On June 16, 2010, the Board issued a notice of a public hearing before the Hearing Examiner for October 14, 2010. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in its report dated October 11, 2010 (Exhibit 12), recommended approval of the Petition, with four (4) conditions. The Department of Housing and Community Affairs (“DHCA”) inspected the property on October 8, 2010. Housing Code Inspector Robert Goff reported his findings in a memorandum dated October 12, 2010 (Exhibit 13). The inspector concluded that occupancy must be limited to a family of three or two unrelated persons, in habitable space of 448 square feet. Exhibit 13.

The hearing went forward as scheduled on October 14, 2010. No opposition appeared at the hearing. The record was held open until October 22, 2010, to give time to the Court Reporter to produce the transcript. The record closed on October 22, 2010, no further documents other than the transcript being received.

For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

## **II. FACTUAL BACKGROUND**

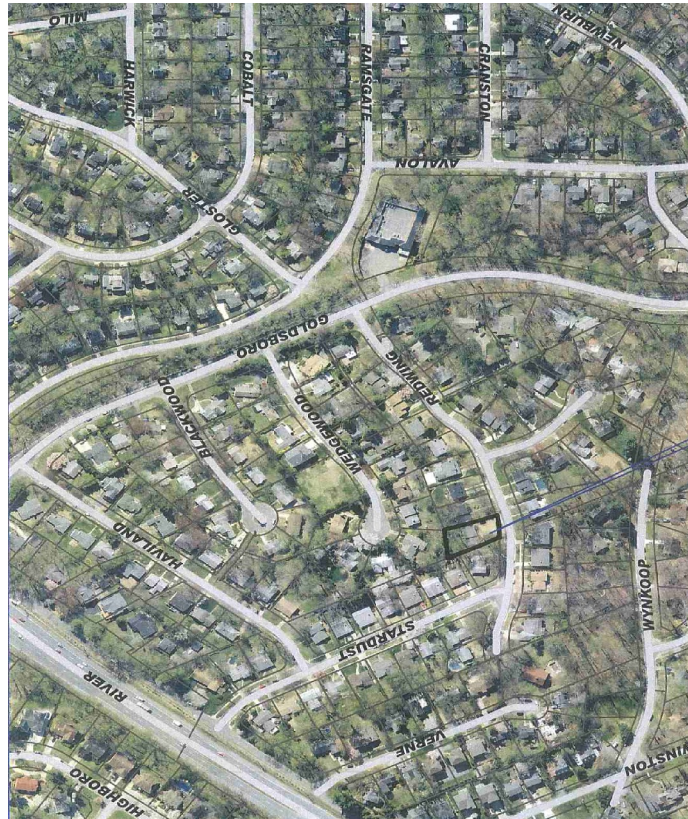
### **A. The Subject Property and Its Current Use**

The subject property is located at 6305 Redwing Road, Bethesda, Maryland, on the east side of Redwing Road, approximately 900 feet west of River Road. It is zoned R-60. The lot contains a total of 0.21 acres (9,191 square feet) with driveway access from Redwing Road. The property is improved with a two-story single family home with a basement, shown below.



### **B. The Surrounding Neighborhood**

Technical Staff advises that the property adjoins and confronts single-family homes within the R-60 Zone on all sides. Exhibit 12, p. 5. Technical Staff did not delineate specific boundaries of the neighborhood, but did include an aerial map of the surrounding area which showed natural roadway boundaries of River Road to the northeast, Goldsboro Road to the south, Winston Road to the north, and Wynkoop Boulevard and Merrimac Park to the west (shown on page 4). Exhibit 12.



As Technical Staff advises that the entire vicinity consists of single-family dwellings and the aerial photograph confirms this, the Hearing Examiner finds these to be the boundaries of the neighborhood as evidenced by the record in this case.

DHCA reports that there is one accessory apartment in the immediate vicinity of the subject property. Exhibit 13.

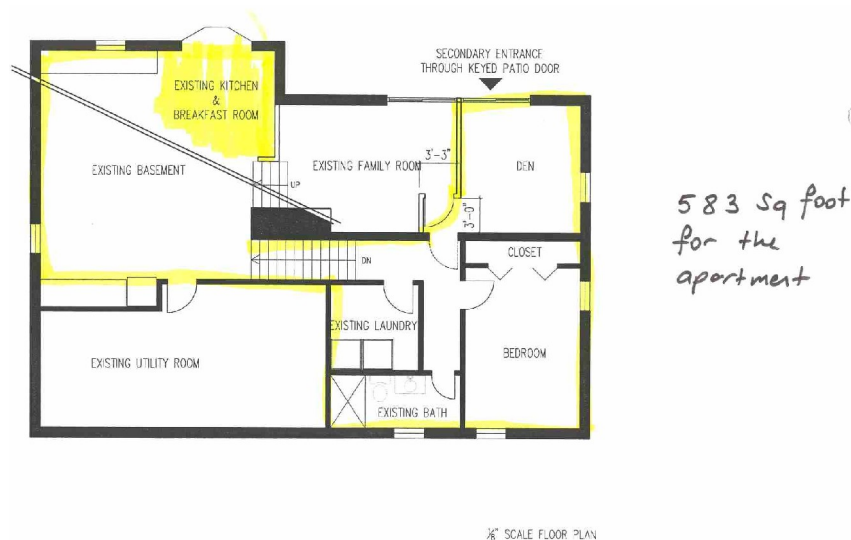
### **C. The Master Plan**

The subject property lies within the *1990 Bethesda Chevy Chase Master Plan*. Exhibits 8 and 12. The property is in the land use and zoning area denominated the “Palisades-Western B-CC”, bounded by River Road to the east, Wilson Lane to the north, Clara Barton Parkway to the southwest and Goldsboro Road to the south. Exhibits 8 and 12. The Plan supports R-60 zoning for the entire Palisades-Western B-CC area. Technical Staff

advises that there are no master plan recommendations relevant to this site or to accessory apartments. The Plan does recommend “preservation of the Potomac Palisades’ unique environmental features of steeply wooded slopes and vistas and the perpetuation of the open space character established in the area”. Exhibit 12, p. 5. Technical Staff found the special exception to be consistent with the master plan. The Hearing Examiner agrees with Technical Staff because the Plan supports the R-60 zoning in which accessory apartments are a special exception use. In addition, this accessory apartment is not visible from the street and therefore doesn’t change the existing structure’s appearance as a single-family dwelling consistent with the surrounding neighborhood.

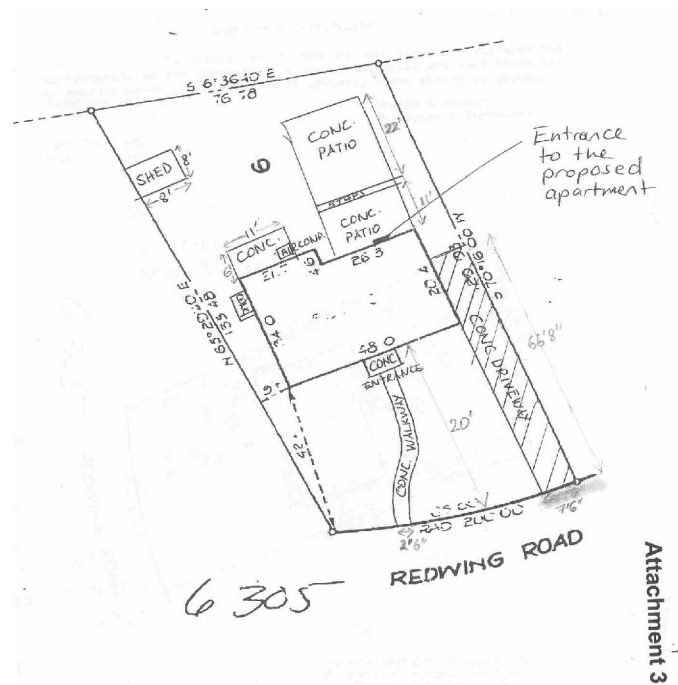
#### **D. The Proposed Use**

The petition proposes an accessory apartment in the basement of Petitioner’s existing single story detached home. Technical Staff advises the apartment occupies 583 square feet out of a total of 2,388 square feet of floor area. Exhibit 12, p. 4. DHCA reports that the apartment contains 448 square feet of habitable area. Exhibit 13. The habitable space includes a kitchen and breakfast room, a family room, den, one bedroom and one bathroom as shown on the Floor Plan (below).



The property contains an off-street parking area which can accommodate three (3) cars.

Exhibit 13. On-street parking is permitted in the neighborhood.



### Driveway Access

Access to the basement apartment is by a driveway along the northern side of the main dwelling that leads to a rear patio (below).



### Driveway to Rear Patio





### **Rear Entrance**

The apartment access will be illuminated by three (3) wall-mounted motion sensor lights, each with sixty (60) watt bulbs. Exhibit 12, p. 7. One light is above the main entrance, one on the south side of the dwelling and another at the back entrance. Exhibit 12, p. 7. In addition, there are three existing landscape lights in the front yard and another three in the back yard each with 40-watt bulbs. Exhibit 12, p. 7; Exhibit 16.

DHCA inspected the property on October 8, 2010. Housing Code Inspector Robert Goff reported his findings in a memorandum dated October 12, 2010 (Exhibit 13).

Necessary corrections included:

1. Patch and paint bathroom walls and ceiling.
2. Install egress window in bedroom to meet Montgomery County Code. 5.7 square feet net clear opening and window must be no higher than 44" from floor to window opening.
3. Remove all keyed window locks from all windows in the Accessory Apartment.
4. Repair rear patio stones so not to be a trip hazard.
5. Replace wire for both outside lights going to the Accessory Apartment (Must use exterior wire).

\* \* \*

8. Remove padlock from rear door and install thumb turn lock.

Exhibit 13. Mr. Goff found that the total habitable area of the accessory apartment is approximately 448 square feet. Based on that fact, he concluded that it may be occupied by no more than 2 unrelated persons or a family not to exceed 3 persons.

### **E. Traffic Impacts**

Technical Staff advises that the requested special exception will generate a single additional peak hour trip for the both uses on the property for a total of two peak hour trips. Exhibit 12. Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment meets the requirements of Local Area Transportation Review (“LATR”). Similarly, Technical Staff concluded that the proposed accessory apartment generates fewer than four (4) trips and therefore is not subject to Policy Area Mobility Review (“PAMR”). There being no evidence in the record to the contrary, the Hearing Examiner so finds.

### **F. Environmental Impacts**

Petitioner does not propose any external changes to the site (with the exception of enlarging the window wells for the bedrooms). Technical Staff advises that the property is exempt from the Forest Conservation Law. Exhibit 12, p. 6-7. Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

### **G. Community Response**

There was no community response to the special exception request.



### **III. SUMMARY OF THE HEARING**

Petitioner testified at the public hearing in support of the petition. Mr. Robert Goff, a DHCA inspector, also testified as to compliance with the Housing Code.

#### **A. Petitioner's Case**

##### Ms. Atike Akyuz:

Ms. Akyuz, owner of the property, testified that the basement apartment currently exists. Tr. 12. She identified the photographs and plans marked into evidence and stated that they fairly and accurately represented existing conditions on the property. Tr. 10-14. She agreed with the findings and analysis of the Technical Staff report and adopted those as part of her testimony and agreed to accept all conditions stated in the report. Tr. 6. Ms. Akyuz also agreed to make all repairs and correct all conditions listed in the DHCA inspector's report (Exhibit 13). Tr. 6. Access to the apartment will be illuminated by three (3) motion sensor lights. Tr. 11. She testified that there would be no exterior changes to the dwelling other than those repairs listed in the Housing Inspector's memorandum. Tr. 16. Ms. Akyuz testified that she parked one car on the property. Tr. 15.

#### **B. Public Agency Testimony**

##### Housing Code Inspector Robert Goff:

Mr. Goff testified that his Memorandum dated October 12, 2010, accurately listed the conditions that needed to be repaired on the subject property, but an additional repair inadvertently had not been included. Tr. 16. He stated that the rear door had to have a single cylinder thumb latch lock instead of a double cylinder lock. Tr. 15. The double cylinder padlock and hasp had to be removed. Tr. 17. He stated that there was one accessory

apartment in the immediate vicinity. Tr. 17, Exhibit 17. There are three (3) off-street parking spaces on the property. Tr. 15.

### **III. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if she complies with the recommended conditions. Exhibit 15.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code, Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are

“physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 12, p. 9):

- (1) The existence of the apartment as a separate entity from the main living unit;
- (2) The provision within the apartment of the necessary facilities and floor area to qualify as a habitable space under the applicable Code provisions;
- (3) The provision of a separate entrance and walkway;
- (4) The provision of sufficient parking and lighting; and
- (5) The added activity from an additional household, including potential for additional noise from that additional household, and more noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic,

parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found “[t]he size, scale and scope of the proposed accessory apartment will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption or environmental impacts.” Exhibit 12, p. 8. Thus Staff concluded that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial.

As the accessory apartment is fully contained within the interior of the single-family home, will generate only one additional trip, contains a separate walkway, an entrance illuminated with lighting characteristic of residential homes, and has ample off-street parking, the Hearing Examiner concludes that there are no non-inherent adverse effects of the requested use and there will be no adverse effects sufficient to warrant denial of the petition.

## **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

### **Sec. 59-G-1.21. General conditions.**

**§5-G-1.21(a)** *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *1990 Bethesda Chevy Chase Master Plan*. The Plan does not explicitly address the question of accessory apartments, but its stated goal is to preserve the unique environmental features of the Potomac Palisades area and perpetuate the open space character of the area. Exhibit 12, p. 5. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. Plan, p. 20. The Technical Staff

concluded that the proposed accessory apartment would be consistent with the Master Plan. Exhibit 12, p. 6.

The requested special exception will maintain the residential character of the area because Petitioner plans no external structural modifications to the existing single-family dwelling (other than repairs required by DHCA). Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the *1990 Bethesda Chevy Chase Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The accessory apartment will be located in the rear of an existing dwelling and will not require any significant external changes. It therefore will maintain its residential character. There will be sufficient parking, both on- and off-street, and traffic conditions will not be affected adversely, according to Transportation Planning Staff. There is only one other similar use in the vicinity (another accessory apartment). Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood. Technical Staff indicates that the subject site will be



adequately served by existing public facilities (Exhibit 12, p. 5), and the evidence supports this conclusion.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the lighting on the property “is adequate and consistent with the residential character of the neighborhood”. Exhibit 12, p. 7. There will be three (3) sensor lights each containing a 60-watt bulb, and several landscape lights containing 40-watt bulbs. The Hearing Examiner agrees with Technical Staff that the proposed lighting is residential in nature. Since the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly*

*residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Because there is only one other accessory apartment in the immediate vicinity, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 12, p. 5), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision,*

*the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 12. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially given the availability of off-street and on-street parking at the site and the limited number of additional trips generated by the special exception, the Hearing Examiner finds that the use will not cause a traffic hazard on the public roadways abutting the property and will not reduce the safety of vehicular or pedestrian traffic.

Exhibit 13, p. 7.

### ***C. Specific Standards***

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

#### ***Sec. 59-G-2.00. Accessory apartment.***

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

##### ***(a) Dwelling unit requirements:***

*(1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

*(2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board*

*to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1958. Exhibit 12. It therefore meets the “5 year old” requirement.

- (5) *The accessory apartment must not be located on a lot:*

- (i) *That is occupied by a family of unrelated persons; or*
- (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection; a requirement that that occupancy of both the main house and the accessory apartment meet all Code requirements will be a condition of this approval.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is via a driveway which leads to a patio in the rear of the dwelling. No exterior changes to the structure are proposed except those required by DHCA. There will thus be no change to the residential appearance of the dwelling.

*(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling, with the exception of enlarging the wells surrounding the basement windows and making the repairs required by DHCA. The Hearing Examiner finds that these changes, necessary for residential occupancy, will not affect the residential nature of the structure.

*(8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

*(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment is subordinate to the main dwelling and under 1,200 square feet, as it occupies approximately 538 square feet of space (only 448 square feet of which is habitable space) in Petitioner's existing 2,388 square-foot home. Exhibit 12, p. 4; Exhibit 13. The Hearing Examiner finds that the apartment is subordinate to the main dwelling.

#### **59-G § 2.00(b) Ownership Requirements**

*(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period*



*of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the upper level of the dwelling.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed submitted into the record, Petitioner purchased the home in 2008. Exhibit 12. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: Petitioner has submitted a deed dated April 2, 2008, evidencing ownership in her name. Exhibit 15. Therefore, the Hearing Examiner concludes that this condition has been met.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

#### **59-G § 2.00(c) Land Use Requirements**

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards*

*of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject property consists of a single lot that is approximately 9,191 square feet in size, and therefore satisfies this requirement.

*(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As there is only one accessory apartment in the immediate vicinity of the subject property, the Hearing Examiner finds that the petition will not create an excessive concentration of similar uses.

*(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

*Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: Both Technical Staff and the Housing Inspector concluded that the off-street parking area may accommodate up to three (3) cars. Petitioner testified that she parks only one car on the property. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) spaces has been met.

#### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and

Community Affairs. As discussed in Part II. D. of this Report, the Housing Code Inspector's report (Exhibit 13) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than three family members or two unrelated persons. As mentioned above, Petitioners have agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

## **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2775, which seeks a special exception for an accessory apartment to be located at 6305 Redland Road, Bethesda, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record;
2. The Petitioner must make the repairs needed to comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Community Affairs (Exhibit 13):
  1. Patch and paint bathroom walls and ceiling;
  2. Install egress window in bedroom to meet Montgomery County Code. The egress window must contain 5.7 square feet of net clearing opening and the window must be no higher than 44 inches from floor to window opening.
  3. Remove all keyed window locks from all windows in the accessory apartment.
  4. Repair rear patio stones so that no trip hazard exists.
  5. Replace the wire for both outside lights going to the accessory apartment. Exterior wire must be used.
3. No more than three family members or two unrelated persons may reside in the accessory apartment;
4. The main dwelling unit must not be occupied by a family of unrelated persons;
5. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and

7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 17, 2010

Respectfully submitted,

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Lynn A. Robeson  
Hearing Examiner